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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT HENRY ROSAS,

Defendant and Appellant.

F039524

(Super. Ct. No. SC083071)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Colette Humphrey, Judge.

John Hardesty, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Lloyd G. Carter and Kathleen A. McKenna, Deputy Attorneys General, for Plaintiff and Respondent.

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\*Before Acting P. J. Wiseman, J. Cornell, and J. Gomes.

### **PROCEDURAL HISTORY**

Defendant was charged with felony possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a), count one); possession of drug paraphernalia (Health & Saf. Code, § 11364, count two); and resisting arrest (Pen. Code, § 148, count three). Count one included an allegation that he suffered a prior serious felony conviction pursuant to Penal Code sections 667, subdivisions (c)-(j), and section 1170.12, subdivisions (a)-(e). It also alleged defendant suffered two prior convictions within the meaning of Penal Code section 667.5, subdivision (b).

On September 18, 2001, defendant entered into a negotiated disposition. He agreed to plead guilty to count one for the mid-term of two years and admit the prior strike allegation that would have the effect of doubling his sentence to four years. In exchange, the two misdemeanor counts were dismissed and the two prison priors were stricken.

On November 6, 2001, defendant was sentenced to four years in prison and awarded appropriate time credits.

### **FACTUAL HISTORY**

During an investigation of a report of stolen property, defendant was seen driving up to a residence. Upon contact, the officers observed him to have dilated eyes and to be fidgety. When asked for identification, defendant approached his vehicle then walked away. Upon being ordered to stop, defendant began to run. Following a short foot pursuit, defendant was arrested. A records check revealed he was on parole and a vehicle search resulted in the seizure of suspected methamphetamine and a glass smoking pipe. Defendant was also determined to be under the influence of a stimulant. The material seized was later found to contain .54 grams of methamphetamine.

### **DISCUSSION**

On appeal, defendant alleges the sentencing court abused its discretion by failing to strike his prior strike conviction. Respondent counters that defendant may not

challenge the sentence imposed because he 1) failed to obtain a certificate of probable cause, and 2) waived the objection by failing to ask the court to strike his prior conviction at the time of sentencing. Alternatively, respondent contends that, in any event, the court did not abuse its discretion by failing to strike defendant's prior conviction. We choose to address only the merits of defendant's claim.

Defendant's criminal record reveals he is no stranger to the criminal justice system. In summary, he has suffered six prior misdemeanor and four felony convictions. He has been sentenced to prison (not counting parole violations) at least twice. Three of the four felony convictions involved burglaries and at least one of these was a residential burglary. In addition, defendant violated his probation and parole on multiple occasions, the last time as recently as May 2001.

In *People v. Benevides* (1998) 64 Cal.App.4th 728, we held that where the record shows the trial court was aware of its discretion to strike a defendant's prior convictions pursuant to Penal Code section 1385 and declines to exercise it, such a decision will not be overturned for an abuse of discretion unless the court "expresses clearly improper reasons for refusing to exercise its discretion." (*People v. Benevides, supra*, 64 Cal.App.4th at p. 735, fn. 7.) In this case, we presume the court was aware of its discretion to strike prior convictions under the watershed decision of *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, but decided against doing so based on defendant's background, record, character, and prospects. The record does not disclose any patently improper basis for the court's refusal to strike the prior, and thus defendant's contention that the court abused its discretion is summarily rejected under *Benevides*.

Defendant argues we should review the court's decision under an abuse of discretion standard that applies only when the court exercises its limited discretion by striking a prior. (See, e.g., *People v. Superior Court (Romero), supra*, 13 Cal.4th at p. 532 ["If, on remand, the trial court again decides to exercise its discretion to strike the prior felony conviction ... such decision will be reviewable for an abuse of discretion

according to the procedures generally applicable to such decisions”]; accord *People v. Williams* (1998) 17 Cal.4th 148, 158 [“... A court’s discretion to strike [or vacate] prior felony conviction allegations ... is limited ... and is subject to review for abuse”]; *People v. Garcia* (1999) 20 Cal.4th 490, 503 [finding, under *Williams*, “we cannot say that the trial court’s decision to strike the prior conviction allegations as to count 3 “falls outside the bounds of reason””].) Assuming, for the sake of argument, that this standard were to apply where the court does not exercise its limited discretion, defendant’s contention is without merit. We have summarized defendant’s lengthy criminal history above. In light of this history and the applicable principles, we cannot conclude defendant falls outside the spirit of the Three Strikes law to any degree. (*People v. Stone* (1999) 75 Cal.App.4th 707, 717.) Defendant has done little if anything to manage his substance abuse problem. In light of this and his continual disregard of the law, his prospects appear bleak. We conclude the court did not abuse its discretion when it failed, on its own motion, to strike defendant’s prior serious felony conviction.

#### **DISPOSITION**

The judgment is affirmed.